

City Council Direction related to the Flea Market

June 29, 2021 Council approvals for Agenda Items 10.4 and 10.5 (BBUV Plan and Flea Market Council actions):

- Staff memorandum with PC recommendation
- Supplemental staff memorandum
- 6/21/2021 memo from Vice Mayor Jones
- 6/22/2021 memo from Council Member Peralez: Recommendations 1.a, 1.d, 1.e, and 4
- 6/22/2021 memo from Council Member Carrasco: only Recommendations 1 and 2
- 6/22/2021 memo from Mayor Liccardo and Council Members Cohen and Jimenez
- 6/28/2021 memo from Council Member Cohen
- 6/29/2021 memo from Mayor Liccardo
- 6/29/2021 memo from Council Member Carrasco: change to Section 1.e in Section 2
- Direction from the meeting:
 - The Flea Market Advisory Group will include a supermajority of vendors.
 - Clarify that the conditions of approval of the Flea Market rezoning ordinance shall apply to successors in interest of the property.
 - Changes indicated in Sections 1.h and 6.d
 - Clarify that with regard to Item 10.5(a) that the San Jose Flea Market Southside Rezoning EIR CEQA resolution to be certified and adopted is the version posted as “(a) Resolution (2)” with the following changes to Section C.6:
 - Include a reference to the Property Owner’s 6/28/2021 revised offer letter, and
 - Change the reference to the \$2.5 million funding from the Property Owner to \$5 million.

Summary of Direction organized by topic

Overarching intent: The City must help mitigate the potential risk of displacement due to the proposed project and ensure the vendors have access to financial tools, resources, information and opportunities, as they become available.

Vendor Protections

- The property owner shall provide at least **one-year advance written notice** to all vendors of any planned closure, gap in operation, or relocation of The Flea Market onsite, some other market location, or any other location in San Jose. The notice would not be initiated prior to July 1, 2023.
- The property owner agrees that all vendors who follow the rules and terms in their Rent Agreement shall continue to have their Rent

Agreement renewed and **shall not be evicted** from The Flea Market prior to the planned closure or relocation of the market.

- Acknowledge the following agreement the applicant is offering to Flea Market Vendors: The Flea Market, Inc. will allow any existing vendor of record on July 1st, 2021 to opt-in to a **6-month license agreement**. The “6-month” term will be fixed blocks of time from July 1st to December 31st and January 1st to June 30th each year.

Transparency and Accountability

- Direct staff to work with the applicant to ensure that the Phase 1 Turnkey park improvements submittal, as defined in the Berryessa BART Urban Village Parks Master Plan, are approved by August 2, 2021 so that the construction of Mercado and Bruzzone Parks can be completed by Q1 2022.
- Commencing September 1, 2021, the owner shall submit a **written quarterly status report to the Director of PBCE and the Community and Economic Development Committee** that summarizes all construction planning and permitting activities (soil remediation, utilities, infrastructure, grading, building construction) that may result in construction impacts to the existing Flea Market operations. The Report must include estimated dates of when the earliest construction impact may occur, if known. The report will also specify whether any vendors have been displaced, relocated, or terminated. This report shall be provided to the City no later than 30 days following the end of the quarter for which it is due. The Community and Economic Development will consider the Owner’s reports twice each year.
- Require that any **Planned Development (PD) Permit** that includes market-rate dwelling units to be approved only after, or at the same time, that a Planned Development Permit that includes the new market space is brought to Council.
 - If the Flea Market finds an alternative location, then the other elements as appropriate are no longer needed, and all appropriate language changes shall be made to the ordinance and resolutions.
- Prior to submittal of an application for the PD permit referenced in 2.a16.d, Property owner shall make and complete a reasonable evaluation of the financial feasibility of a denser/multi-level urban market and associated parking. The evaluation should study all scenarios including comparable cities that have successfully implemented a similar market model.
- The property owner shall introduce the City to **any successor in interest** to the Urban Market site at least 60 calendar days prior to the close of escrow in order to engage in a conversation about the Urban Market project.
 - The conditions of approval of the Flea Market rezoning ordinance shall apply to successors in interest of the property.
 - Include clarifying language in the ordinance and resolution that the conditions of approval remain in effect in the event the property is transferred.

Planning for the Future Urban Market

- **Intention:** The approximately five-acre Urban Market area designated in the Berryessa BART Urban Village Plan as the publicly accessible plazas of the new development is intended to provide the existing Flea Market vendors an opportunity to relocate within the new development on the subject property.
- Direct City staff from the Office of Economic Development to work with the property owner to **assess the flea market vendor community and the job retention and creation potential** that will inform the design of a future market. The Office of Economic Development should consider a consultant/community partner to assist in this effort and fund the study with the funds from the first contribution to the City by the property owner and only after that contribution is received by the City.
- Direct staff to explore **financial tools** to complete development of the new five-acre Urban Market on the project site, including public funding options should gap financing be required.
- The City and the property owner may explore:
 - The **potential utilization of public and private streets** for expanded market operations.
 - **Creative partnership models** for the Urban Market site.
 - Potential partnerships with BART.
- The City Manager will communicate to the Valley Transportation Authority (VTA) the intention of the City of San Jose, and of each of the participating board members, to formally request that VTA (and if necessary, BART) evaluate and negotiate to offer a lease or easement of VTA- owned areas in and around the BART station to dramatically expand the footprint of the Flea Market on Saturdays and Sundays. After VTA staff has analyzed the options, the matter should be brought to the full VTA Board for discussion.
- Office of Economic Development will engage the Berryessa Flea Market Vendor Association (BFVA) and other interested vendors as the future of the urban market takes shape.

Future Market Operations

- The property owner shall provide Flea Market **vendors with a current month-to-month** rental agreement the first opportunity to move to the Urban Market area.
- The property owner shall set rents in the Urban Market area in an amount **comparable to other open-air markets** in the Bay Area such as any open air market in the Bay Area including, but not limited to, the Capitol Flea Market, De Anza Flea Market, and Laney College Flea Market.

Fund

- A Vendor Business Transition Fund will be established and managed by the City or its designee. The **general purpose of this fund** is to mitigate

direct expenses the vendors may experience when moving to any temporary site and/or Urban Market area on site, some other market location, or any other retail location in San Jose.

- The property owner shall endow the Vendor Business Transition fund with \$5.0 million, in accordance with the following schedule:
 - Within 120 calendar days of the effective date of the Planned Development Zoning File No. PDC17-051, the property owner shall transfer **\$500,000 to the City in early funding to support the initiation of the Flea Market Advisory Group and Vendor Business Transition fund**, and
 - On the date that the property owner issues the one-year notice to the vendors in accordance with Section a above, the property owner shall transfer **\$2 million** to the City's Vendor Business Transition Fund.
 - On the date that the existing Flea Market ceases operation on-site, the property owner shall transfer an additional **\$2.5 million** to the City's Vendor Business Transition Fund.
- Direct staff to work with the Flea Market Advisory Group to allocate the \$5 million dollars in the Vendor Business Transition Fund to direct vendor support and to consultant services and non-profit, as needed.
 - Staff from the Office of Economic Development shall utilize the early funding provided by the applicant to **coordinate the initiation of the Flea Market Advisory Group and Vendor Business Transition Fund**.
 - Allow for the full 5 million dollars to be used to explore non-profit and other community partners to assist in Flea Market transition as needed, with support from the vendors.
 - The Office of Economic Development **should fund the [assessment of the existing market] with the funds from the first contribution** to the City by the property owner and only after that contribution is received by the City.
 - Contracts for consultant services will follow City procurement requirements, with opportunities for vendor participation in RFP review panels.

Advisory Group

- A Flea Market Advisory Group **consisting of representatives** of the property owner/developer, the City, and a supermajority of Flea Market vendors including members from any vendors' association will be created, in accordance with item i, with the intention of ensuring Flea Market vendors have a meaningful voice and role in determining the use of the transition funds and guiding the development of the urban market concept by providing the following:
 - **Recommendations** to the property owner and City on the design, operation, and associated parking of the Urban Market area.

- **Funding decisions** for the Vendor Business Transition Fund including the general purposes of the fund described in item f), and additional resources the vendors may require including but not limited to data, relevant existing models of public/private markets, and examples of self-sustaining operational methods in order to inform the recommendations outlined above.
- Regular **communication** with all of the Flea Market vendors on the status and progress of the Flea Market transition, decisions, and recommendations made by the Flea Market Advisory Group, as well as the opportunity for Flea Market vendors who are not part of the Advisory group to provide feedback to the Advisory Group.
- Establishing **protocols** for determining how Flea Market vendors with a month-to-month rental agreement will be offered the opportunity to relocate to the new Urban Market.
- The composition of the Flea Market Advisory Group shall be determined by the City Council.
- Upon receipt of the first contribution to the City by the property owner, the City or its designee will form a Flea Market Advisory Group by **drafting a charter** that shall include at a minimum the purpose of the group, the number of members of the group, the composition of the group, and which members shall have voting rights. The City or its designee shall convene an initial group of vendors and stakeholders, including the property owner, to draft and approve the Flea Market Advisory Group charter.

OED Support for Vendors

- **General intent:**
 - Direct staff from the Office of Economic Development to assist in linking resources that can support the vendor's current operations as well as support future operations as the market evolves.
 - Direct the Office of Economic Development to expand opportunities for continued viability and survivability for vendors facing displacement from the flea market.
 - Explore policies that can help in the transition by addressing opportunities and obstacles currently in practice.
- OED will activate business support services for vendors.
 - Staff could immediately begin to connect vendors with available resources to support their existing businesses and help them plan for the future. Staff from OED's **business development team** would review the services that are available to small business with the vendors, such as: federal, State and local resources; assistance with relevant application processes; and access to business/technical assistance, including financial counseling, marketing, and legal assistance for vendors seeking to explore expanding to a retail space.

- In addition, staff from OED's **work2future team** could provide information about available employment and training services with interested vendors, as a previous study found that more than 50% of the vendors work at the Flea on weekends, and information about access to training and jobs in growth industries may provide desirable career options to complement the vendors participation at the market.
- City staff will explore vacant **retail space opportunities** for vendors.
 - Find alternative locations for pop-up shops, farmer markets and brick and mortar.
- Expand **Eastside Business Manager** from part-time to full-time to assist vendors.

Additional Resources for Vendors

- Direct staff to identify additional City, State, Federal or philanthropic resources to support the Berryessa Flea Market Vendors Association or its designated partners, in **capacity building**, including technical and legal assistance and developing new partnerships.
- Subject to the limitations below, direct the City Manager to **match the \$2.5 million dollars** Vendor Business Transition fund by allocating money from the American Rescue Plan reserve.
- City Manager will explore sources for additional funding from the City, and the County, to assist Berryessa Flea Market Vendors in any transition that they might need to make in 2024 or thereafter.
 - Return in the Fall for Council action
 - Potential sources could include, but are not limited to:
 - American Rescue Plan (ARP) dollars, if eligible based on pending federal regulations, so long as any ARP contribution would be decided no later than December 31, 2021;
 - Taxes and fees emanating from the development on the Berryessa site, which might be advanced from City accounts upon the issuance of a building permit;
 - Economic Development grants, such as those recently received by the City, that assist small businesses in recovery, and support filling vacant storefronts.
- City staff will work with the vendor community to identify financial tools including gap financing options if needed.

Alternative Market Sites

- Direct staff to explore potential **off-site market options**.
- Identify **potential public land** that could serve as a new Flea Market space, including County owned sites, and report back to Council with these findings.